

Operational Policy Letter #71

Department of Health and Human Services

Health Care Financing Administration

Center for Health Plans and Providers

Medicare Managed Care

May 19, 1998

TIMING OF A NOTICE OF NON-COVERAGE (NONC) ISSUED TO A HOSPITAL INPATIENT -- *CLARIFICATION OF EXISTING POLICY*

Operational Policy Issue / Question:

When must a hospital inpatient be issued a written NONC by a health maintenance organization (HMO), competitive medical plan (CMP), or a hospital?

Answer:

An HMO or CMP (or hospital that has agreed to accept delegation of the determination of noncoverage of inpatient care) must issue a written NONC to a hospital inpatient when the affiliated physician responsible for the hospital care concurs that the Medicare enrollee no longer requires inpatient hospital services and therefore coverage for the inpatient stay will cease. The enrollee does not have to disagree with the noncoverage determination in order to receive a written NONC.

Medicare regulations are in full agreement with the above principle. The regulations at 42 CFR 417.440(f) provide that a hospital inpatient enrollee is entitled to receive inpatient care until a written NONC is issued. That is, the HMO/CMP is financially responsible for the enrollee's inpatient stay until a NONC is received. Prior to the issuance of the written NONC, the HMO or CMP (or hospital) must obtain the approval of the physician responsible for the enrollee's inpatient care. The written NONC must include: 1) the reason why inpatient care is no longer needed; 2) the effective date of the enrollee's liability for continued inpatient care, and 3) the enrollee's appeal rights.

In determining whether further inpatient hospital stay is medically necessary, consider the level of care required by the enrollee and the availability and appropriateness of other facilities and services. For example, if the patient no longer requires hospital care but could receive proper treatment at the SNF level of care and a Medicare certified SNF bed

is not available, further care at the hospital level of care is medically necessary. In such cases, a notice of noncoverage should not be issued. (See MIM §2421.1.)

On March 3, 1995, HCFA issued a Program Information Memorandum entitled "Immediate PRO Review of Decisions for Hospital Discharges." Therein, it is stated that: "Medicare enrollees (or their representatives) who disagree that the hospital care they are receiving is no longer medically necessary must receive a written NONC." This statement is incorrect in that it imposes a responsibility on the enrollee to disagree with the noncoverage decision before he or she is eligible to receive a NONC. This position is inconsistent with the regulations and should be disregarded because the regulations clearly provide for a written NONC to be issued routinely, regardless of whether or not the enrollee disagrees with the noncoverage decision. The NONC must reflect current notice requirements for HMOs/CMPs/HCPPs.

Although this OPL represents a clarification of existing policy, we know that the policy is not being applied uniformly. Therefore, we are advising all plans not currently in compliance to have this policy in place no later than July 1, 1998.

Contact:

HCFA Regional Office Managed Care Staff